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ABSTRACT

This document examines the legal requirements for the reduction in force (RIF) of North Carolina Department of Public Instruction employees, with a focus on certified (instructional) staff. A question-and-answer section discusses areas of concern to administrators about the reduction-in-force process. North Carolina State law relating to the RIF process is highlighted, specifically: the system of employment for public school teachers, grounds for dismissal, the hearing procedure, and the appeals process. Because each situation is unique, there can be no one answer to every system's problems. (LMI)

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A Series of Discussions on Legal Issues in Elementary and Secondary Education

SCHOOL MANAGEMENT ADVISOR

By Harry E. Wilson, Agency Legal Specialist

NORTH CAROLINA DEPARTMENT OF PUBLIC INSTRUCTION EDUCATION BUILDING, RALEIGH, NC 27601-2825 919/715-1000

Issue 24: 1993

BOB ETHERIDGE, SUPERINTENDENT OF PUBLIC INSTRUCTION

Reduction in Force

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Reduction in Force

LEGAL REQUIREMENTS

G.S. 115C-325 addresses reduction in force from two perspectives. First, G.S. 115C-325(e)(1)l. enables school boards to demote or dismiss a teacher if a justifiable decrease in the number of teaching positions resulted from district reorganization, decreased enrollment, or decreased funding. Second, G.S. 115C-325(e)(2) gives the process the superintendent must follow to accomplish a reduction in force and states that a teacher dismissed due to a reduction in force has priority consideration for vacant positions for which the teacher is qualified. This priority extends for three consecutive years after the dismissal, except that if the teacher refuses any such position, the teacher's name is to be removed from the priority list. Relevant portions of G.S. 115C-325 are reproduced in the Appendix.

INTERPRETIVE ANALYSIS

School systems have had to face reductions in force for a number of years as enrollments declined and federal funds decreased. But the 1990s have brought this issue into sharper focus as the State faces its most severe financial situation since the Depression. Many costs of operating government have been handed from the federal system to the states, which have in turn passed much of the costs on to local governments.

Caught short of adequate resources in the midst of the school reform movement, school boards must decide how to supply instructional services they are directed by law to provide. Should they implement a broad-based reduction-in-force policy, initiate dismissal proceedings against teachers who may warrant dismissal, or use a combination of the two?

The decisions required by a reduction in force are not limited to instructional (*certified*) staff. School boards also have two other types of employees - *contract* and *at will*. Contract employees are those who are in positions that are not eligible for career status, including assistant and associate superintendents and any others who are hired for a specific time period. Effective July 1, 1995, anyone who becomes a principal, director or supervisor will also be a contract employee. At-will employees include all other local school employees who are in neither a certified nor a contract position. This issue emphasizes reduction in force of certified employees because most questions and challenges have occurred in this area.

Because each situation is unique there can be no one answer to every system's problems. Dismissal for cause has the potential to involve more procedural requirements and complex issues than reduction in force, and this certainly must be considered. The following questions and answers may help guide principals and central office personnel in arriving at the proper course to follow, as well as provide useful information on the reduction-in-force (RIF) process.

Q: When funds to one specific program are cut, must the RIF policy be applied to all personnel across the board, or may it be confined to the affected program?

A: The RIF may be confined to the affected program.

Q: Are teachers in federal programs, such as special education, required to be funded at the expense of those in other programs to prevent the loss of staff in that program?

A: No. Our Supreme Court has ruled that career status teachers in one program area have no

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The School Management Advisor, a series of comments, questions and answers, and interpretive analyses, is published periodically. Each issue deals with a single topic that is of current concern to school personnel. The contents do not purport to be official legal opinions.

greater protection against dismissal than teachers in other areas.

Q: May a board's RIF policy extend to other budget areas than the one in which the reduction in funds occurred?

A: Yes. Our courts recognize that school boards possess considerable latitude in responding to financial difficulties. This may include eliminating positions in other budget areas.

Q: When a school system's funds have decreased, must it automatically apply its RIF policy or may it look for other ways to absorb the lost revenue?

A: The policy need not automatically apply. In fact, the board may not rely solely on the decrease in funds; it must demonstrate that the decrease justifies the elimination of positions. School boards should consider other alternatives and keep a record of those considerations and its decisions concerning them. Among those alternatives is seeking funds from other sources and spreading the loss throughout budget areas. If a teacher challenges the RIF, the court might require the board to show that of all educational options available, RIF was the best choice, or that reducing positions from full time to part time would not be better than eliminating that teacher's position.

Q: What appeal rights do teachers have whose positions have been eliminated in a RIF?

A: A teacher may appeal only to the school board; there is no Professional Review Panel hearing.

Q: What are the grounds for a teacher to challenge a RIF?

A: In order to win a challenge, the teacher must show that the board acted to eliminate that position from personal, political, discriminatory or irrational reasons, or that its action was a maneuver to circumvent the dismissal process.

Q: Is job performance a proper consideration in determining positions to be eliminated in a RIF?

A: Yes. While teacher dismissals under the Tenure Act are normally based on performance (for-cause dismissal), the elimination of a position due to RIF is based on inadequate funding. The decision to eliminate a position should be based on an examination of the overall school program and a setting of educational priorities. Even so, the decision of which position to eliminate among employees in similar positions may involve reviewing job performance. So it is critical that the board requires regular evaluations of all personnel according to objective criteria.

Q: After two school systems merge, may the resulting system eliminate positions through a RIF? In particular, may teaching positions that are filled by career status teachers and positions filled by contract employees be eliminated?

A: Yes, but particular care must be taken with contract employees to assure that the action is not contrary to provisions of the contract. The law is clear that in cases of "district reorganization," which may include merger, there may be a justifiable decease in teaching positions. Even here, the board must clearly establish that the decrease in positions is justified by the merger.

Q: Isn't the RIF process a convenient way to get rid of career status teachers who might otherwise be difficult to dismiss?

A: Possibly, but it is not a good method for doing this. A teacher who has been dismissed under one or more of the other thirteen grounds of 115C-325(e)(1) has no right to reemployment, but one whose position has been eliminated through a RIF has reemployment rights for three years.

Q: May a career status teacher be RIF'd and a probationary status teacher in the same area be retained? What if the probationary teacher consistently performs better than the career status teacher?

A: No, unless the law clearly allows this to be done. G.S. 115C-325 does not make this specific provision, the career status teacher must be

retained. Otherwise, the protections of the Tenure Act would be meaningless. This is true even though the probationary teacher may perform better than the career status teacher.

APPENDIX
State Law Relating to Reduction in Force

§ 115C-325. System of employment for public school teachers.

(a) Definition of Terms. — As used in this section unless the context requires otherwise:

(1) "Career teacher" means a teacher who has obtained career status as provided in G.S. 115C-325(c).

(2) "Committee" means the Professional Review Committee created under G.S. 115C-325(g).

(3) "Day" means calendar day. In computing any period of time, Rule 6 of the North Carolina Rules of Civil Procedure shall apply.

(4) "Demote" means to reduce the compensation of a person who is classified or paid by the State Board of Education as a classroom teacher, or to transfer him to a new position carrying a lower salary, or to suspend him without pay to a maximum of 60 days; provided, however, that a suspension without pay pursuant to the provisions of G.S. 115C-325(f) shall not be considered a demotion. The word "demote" does not include a reduction in compensation that results from the elimination of a special duty, such as the duty of an athletic coach, assistant principal, or a choral director.

(5) "Probationary teacher" means a certified person, other than a superintendent, associate superintendent, or assistant superintendent, who has not obtained career-teacher status and whose major responsibility is to teach or to supervise teaching.

(6) "Teacher" means a person who holds at least a current, not expired, Class A certificate or a regular, not provisional or expired, vocational certificate issued by the Department of Public Instruction; whose major responsibility is to teach or directly supervise teaching or who is classified by the State Board of Education or is paid as a classroom teacher; and who is employed to fill a full-time, permanent position.

(e) Grounds for Dismissal or Demotion of a Career Teacher.

(1) No career teacher shall be dismissed or demoted or employed on a part-time basis except for one or more of the following:

l. A justifiable decrease in the number of positions due to district reorganization, decreased enrollment, or decreased funding, provided that there is compliance with subdivision (2).

(2) Before recommending to a board the dismissal or demotion of the career teacher pursuant to G.S. 115C-325(e)(1)l., the superintendent shall give written notice to the career teacher by certified mail of his intention to make such recommendation and shall set forth as part of his recommendation the grounds upon which he believes such dismissal is justified. The notice shall include a statement to the effect that if the teacher within 15 days after receipt of the notice requests a review, he shall be entitled to have the proposed recommendations of the superintendent reviewed by the board. Within the 15-day period after receipt of the notice, the career teacher may file with the superintendent a written request for a hearing before the board within 10 days. If the teacher requests a hearing before the board, the hearing procedures provided in G.S. 115C-325(j) shall be followed. If no request is made within the 15-day period, the superintendent may file his recommendation with the board. If, after considering the recommendation of the superintendent and the evidence adduced at the hearing if there is one, the board concludes that the grounds for the recommendation are

true and substantiated by a preponderance of the evidence, the board, if it sees fit, may by resolution order such dismissal. Provisions of this section which permit appointment of, and investigation and review by, a panel of the Professional Review Committee shall not apply to a dismissal or demotion recommended pursuant to G.S. 115C-325(e)(1)l.

When a teacher is dismissed pursuant to G.S. 115C-325(e)(1)l. above, his name shall be placed on a list of available teachers to be maintained by the board. Career teachers whose names are placed on such a list shall have a priority on all positions for which they are qualified which become available in that system for the three consecutive years succeeding their dismissal. However, if the local school administrative unit offers the dismissed teacher a position for which he is certified and he refuses it, his name shall be removed from the priority list.

(j) Hearing Procedure. — The following provisions shall be applicable to any hearing conducted pursuant to G.S. 115C-325(k) or (l) or to any hearing conducted by a board pursuant to G.S. 115C-325(h)(3).

(1) The hearing shall be private.

(2) The hearing shall be conducted in accordance with such reasonable rules and regulations as the board may adopt consistent with G.S. 115C-325, or if no rules have been adopted, in accordance with reasonable rules and regulations adopted by the State Board of Education to govern such hearings.

(3) At the hearing the teacher and the superintendent shall have the right to be present and to be heard, to be represented by counsel and to present through witnesses any competent testimony relevant to the issue of whether grounds for dismissal or demotion exist or whether the procedures set forth in G.S. 115C-325 have been followed.

(4) Rules of evidence shall not apply to a hearing conducted pursuant to this act and boards and panels of the Professional Review Committee may give probative effect to evidence that is of a kind commonly relied on by reasonably prudent persons in the conduct of serious affairs.

(5) At least five days before the hearing, the superintendent shall provide to the teacher a list of witnesses the superintendent intends to present, a brief statement of the nature of the testimony of each witness and a copy of any documentary evidence he intends to present. At least three days before the hearing, the teacher shall provide to the superintendent a list of witnesses the teacher intends to present, a brief statement of the nature of the testimony of each witness and a copy of any documentary evidence he intends to present. Additional witnesses or documentary evidence may not be presented except upon consent of both parties or upon a majority vote of the board or panel.

(n) Appeal. — Any teacher who has been dismissed or demoted pursuant to G.S. 115C-325(e)(2), or pursuant to subsections (h), (k) or (l) of this section, or who has been suspended without pay pursuant to G.S. 115C-325(a)(4), shall have the right to appeal from the decision of the board to the superior court for the superior court district or set of districts as defined in G.S. 7A-41.1 in which the teacher is employed. This appeal shall be filed within a period of 30 days after notification of the decision of the board. The cost of preparing the transcript shall be borne by the board. A teacher who has been demoted or dismissed and who has not requested a hearing before the board of education pursuant to this section shall not be entitled to judicial review of the board's action.

FOR FURTHER READING:

Joyce, "Reductions in Force in the Public Schools: Questions and Answers," School Law Bulletin, Winter 1992.

Phay, "Reduction in Force," [series of 4 articles], Apr. 1980-Jan. 1981.

School Management Advisor, Issue 22, Employment Basics.

School Management Advisor, Issue 23, Employment at Will.

School Management Advisor, Issue 25, Nonrenewal of Probationary Teachers.

School Management Advisor, Issue 26, Dismissal of Career Status Employees.

School Management Advisor, Issue 27, Negligent Hiring and Retention.

School Management Advisor, Issue 28, Certificate Suspension and Revocation.